



Rules and Ancillary Document Review Checklist
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-103 Time and place of sale.**

Date last adopted: **5/25/82**

Reviewer: **Cindy Evans**

Date review completed: **9/1/00**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Explain the goal(s) and purpose(s) of the document:

The goal and purpose of this rule is to provide guidance to taxpayers on determining (1) when a "sale" takes place, (2) when a sale occurs in Washington, (3) the application of RCW 82.04.040 and 82.04.050 for charges made for performing services that constitute a sale, and (4) when a sale occurs and the measure of tax if a gift certificate is used.

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)

Please explain. **This rule is needed because it provides guidance on when and where a sale occurs.**



3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
	X	Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
X		Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

ETA 020.08.103 (Catalogues Purchased Within The State For Distribution Without). The department should consider repealing this ETA because the pertinent information is provided in WAC 458-20-193(6) (Inbound and outbound interstate sales of tangible personal property). See Ancillary Document Review Supplement for ETA 020.08.103.

ETA 173.04.103 (Seed Furnished Under Grower Contracts). This document had previously been reviewed and the recommendation made that the department repeal this rule and the information be incorporated into WAC 458-20-122 (Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use) when it is next revised.



ETA 179.08.103 (Credit Bureau Business, Charges For Credit Information, And The Retail Sales Tax) should be repealed because Det. No. 89-89R, 13 WTD 9 (1993), describes in more definitive terms what is encompassed by "credit bureau business." See Ancillary Document Review Supplement for ETA 179.08.103.

ETA 421.04.103 (Sales Tax: Labor Performed Outside Of State). The department should consider incorporating its information into WAC 458-20-173 (Installing, cleaning, repairing or otherwise altering or improving personal property of consumers) and then repealing this ETA. Having this repair information under the repair rule would assist taxpayers by having all repair issues addressed in one rule, thereby preventing them from having them to review multiple rules. See Ancillary Document Review Supplement for ETA 421.04.103.

ETA 428.04.103/209 (Exchange Agreements Involving Inventory). This document had previously been reviewed and the recommendation made that the department repeal this rule and the information be incorporated into WAC 458-20-208 (Accommodation sales) when it is next revised.

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain. **This rule, while clear and well organized, could be revised to eliminate information that is either addressed in other rules or would be better addressed in other rules. For example,**

- **Rule 103 addresses renting or leasing of tangible personal property which is addressed in greater detail in WAC 458-20-193(5)(d).**
- **Rule 103 addresses gift certificates, explaining when the sale occurs and the measure of the tax in regards to the use of gift certificates. The department should consider incorporating this information possibly into an expanded WAC 458-20-108 (Returned goods, allowances, cash discounts).**

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statutes that



		authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain. **RCW 82.32.300 authorizes the Department of Revenue to make and publish rules.**

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain. **No other governmental entities or state agencies have similar regulatory requirements.**

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain. **This is an interpretive rule that imposes no new or additional administrative burdens on businesses that are not imposed by law.**

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain. **The statutes and rule affect all similarly situated taxpayers in the same fashion.**



9. LISTING OF DOCUMENTS REVIEWED: (Use "bullets" with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **To the extent the following applies to sales of tangible personal property, services, and gift certificates:**

- **RCW 82.04.040 "Sale," "casual or isolated sale."**

To the extent the following apply to sales where a gift certificate is redeemed:

- **RCW 82.08.010(1) Definitions (Selling price)**

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

- **ETA 020.08.103 Catalogues Purchased Within The State For State For Distribution Without.** When a taxpayer purchases catalogues and price lists from local printers, taking delivery in Washington, retail sales tax applies whether the catalogues or lists are subsequently used within or without the state.
- **ETA 173.04.103 Seed Furnished Under Grower Contracts.** Many seed companies contract with farmer-growers to raise seed. These contracts will often provide that ownership of the crop is retained by the seed company, while the risk of crop loss is borne by the farmer-grower. However, the farmer-grower is obligated to pay for the seed, whether or not the crop meets the specified standard. Under these conditions, the transfer of the possession of the seed to the farmer-grower is a sale within the language and intent of RCW 82.04.040. These sales transactions are sales for resale, and subject to the B&O tax.
- **ETA 179.08.103 Credit Bureau Business, Charges For Credit Information, And The Retail Sales Tax.** RCW 82.04.050 includes within the definition of retail sale charges made by persons engaging in the credit bureau business. The term credit bureau business encompasses all persons receiving income from furnishing credit information. The manner in which the information is secured is immaterial.
- **ETA 421.04.103 Sales Tax: Labor Performed Outside of State.** For labor performed outside of Washington to be exempt from retail sales tax, the out-of-state repair must be an integral part of the repair contract and within the contemplation of the buyer-owner. When a repairperson picks up and delivers items being repaired and the repairs are performed outside the state, at the repairperson's own option, the labor is not exempt from retail sales tax.
- **ETA 428.04.103/208 Exchange Agreements Involving Inventory.** Businesses engaged in selling and distributing fungible products often enter into exchange agreements and provide products to other distributors, sometimes receiving payment in kind at a later date. These transactions constitute business activity and are subject to B&O tax, unless they qualify as accommodation sales.

Court Decisions: **None found.**



Board of Tax Appeals Decisions (BTAs):

Proctor Sales, Inc. v. State of Washington, Department of Rev., Docket No. 80-7, August 29, 1980. Business and occupation tax on sales at wholesale applies to all sales made within the state.

Administrative Decisions (e.g., WTDs): **Many of the issues addressed in the Rule 103 are interrelated to those addressed and incorporated in Rule 193, which was effective December 22, 1991. The following WTDs are segregated between those issued prior to 1992 and those issued after 1991.**

WTDs issued prior to 1992:

- **Determination No. 86-289, 1 WTD 337 (1986) - Retail sales by a credit bureau service take place in this state when the services are performed herein.**
- **Determination No. 86-295, 2 WTD 11 (1986) - Physical or constructive delivery of goods determines the time and place of sale and not such matters as where title to the goods or risk of loss passes.**
- **Determination No. 87-4, 2 WTD 127 (1986) - A sale takes place in this state when the goods are delivered to the buyer in the state, not when the goods are paid for.**
- **Determination No. 86-161A, 2 WTD 397 (1987) - Rule 103, rather than the Uniform Commercial Code, governs the time and place of sale for tax purposes. Under Rule 103, delivery connotes possession of the goods by the buyer or another person on behalf of the buyer and not when risk of loss may pass to the buyer.**
- **Determination No. 87-214, 3 WTD 281 (1987) - It is the place of delivery, in the case of tangible personal property, that dictates whether the sale is subject to Washington business and occupation tax. The fact that the taxpayer's products are sold F.O.B. manufacturer's plant is irrelevant in terms of determining a seller's B&O tax liability.**
- **Determination No. 88-6, 4 WTD 417 (1987) - Tax, interest, and penalties were deleted on those transactions for which the taxpayer subsequently provided evidence that sales were for resale, sales made to an out-of-state buyer, or the purchasers had paid the sales or use tax owing directly to this state.**
- **Determination No. 87-342, 4 WTD 229 (1987) - If an out-of-state seller delivers its products to a Washington buyer and delivery takes place outside this state, B&O tax is not applicable to the sale. The seller's records must document the out-of-state delivery.**
- **Determination No. 88-146, 5 WTD 145 (1988) - The sale of property delivered in Washington is subject to retail sales tax regardless of the fact that the property will be used outside of Washington.**
- **Determination No. 88-155, 5 WTD 179 (1988) - When a taxpayer provides storage at its own Washington facility at the request of an affiliate-buyer, pending the products' further sale and shipment by the buyer to an out-of-state destination, the taxpayer in accepting responsibility for storage was acting as an agent of their affiliate-customers. Constructive delivery took place in this state.**
- **Determination No. 89-126, 7 WTD 237 (1989) - The sale of an airplane to a Washington buyer from an out-of-state seller is not subject to B&O tax when the buyer takes delivery of the plane at the seller's out-of-state facility. The shipment of**



airplane parts via common carrier from an out-of-state seller to an in-state buyer constitutes a Washington delivery and sale.

- **Determination No. 89-509, 8 WTD 345 (1989)** - A sale takes place in this state when the goods sold are delivered to the buyer in this state. If delivery to the buyer takes place outside this state, there is no sale in this state.
- **Determination No. 88-366A, 9 WTD 286-55 (1990); Determination No. 98-224, 19 WTD 212 (2000)** - In determining tax liability of persons selling tangible personal property, a sale occurs in Washington if goods sold are delivered to the buyer in this state.
- **Determination No. 90-348, 10 WTD 133 (1990)** - For excise tax purposes the taxability of sales transactions is governed by the Revenue Act and the rules respecting that act, not the Uniform Commercial Code.
- **Determination No. 90-215A, 12 WTD 297 (1990)** - The sale of tangible personal property effected by the transfer of a "commodities warrant" is subject to Washington B&O tax if the property underlying the warrant is delivered in Washington.
- **Determination No. 91-042, 11 WTD 91 (1991)** - Where the contract of sales does not obligate the out-of-state seller to deliver goods to the buyer in Washington and a buyer pays the carrier's freight costs from the out-of-state shipping point (F.O.B. origin, freight collect), the sale and delivery are deemed to have occurred out-of-state and not subject to the B&O tax even if there is general nexus between Washington and the out-of-state seller.
- **Determination No. 91-188, 11 WTD 231 (1991); Determination No. 91-213, 11 WTD 239 (1991)** - If the contract of sale does not obligate the out-of-state seller to deliver the goods and the buyer either pays the carrier's freight charges (F.O.B. origin, freight collect) or carries the goods itself, the sale and delivery are deemed to have occurred out-of-state and not subject to B&O. If an out-of-state seller ships products to non-Washington locations, the sales are not Washington sales and are not taxable by Washington even if the customers themselves are located in Washington.
- **Determination No. 91-279, 11 WTD 273 (1991)** - If the contract of sale does not obligate the out-of-state seller to deliver the goods and the buyer either pays the carrier's freight charges (F.O.B. origin, freight collect) or carries the goods itself, the sale and delivery are deemed to have occurred out-of-state and not subject to B&O.

WTDs issued after 1991:

- **Determination 91-192, 11 WTD 383 (1992)** - see description for Det. No. 91-188, above.
- **Determination No. 91-174, 11 WTD 353 (1992)** - Where a seller sells and invoices goods sold and then stores the goods for a lengthy period of time pending disposition by the buyer, there has been constructive delivery to the buyer with seller deemed as agent of the buyer to provide storage. A sale takes place for tax reporting purposes at the time of invoicing when the taxpayer is on an accrual basis.
- **Determination No. 91-281, 11 WTD 469 (1992)** - The time of sale for a conditional sale is when the buyer takes possession.



- **Determination No. 92-057, 12 WTD 109 (1993)** - An out-of-state taxpayer who consigns inventory to an out-of-state distributor's warehouse pending subsequent sales by that distributor in its own name to retail outlets is deemed to be making wholesale sales to that distributor. If the warehouse is located outside the state of Washington, then the sale takes place outside the state of Washington.
- **Determination No. 89-89R, 13 WTD 9 (1993)** - Credit bureau businesses are liable for retailing business tax and collection of retail sales tax measured by gross receipts from credit reports where the retail services which generate such reports are performed in this state, regardless of where the customer is located and regardless of where the credit report is delivered. When a credit bureau performs information gathering, analysis, formatting and explanation, and dissemination in Washington, the gross receipts paid by the client are fully taxable in Washington State. In the case of credit bureau businesses and other services statutorily defined as "retail sales," the taxable incident or event is allocated to the location where the fundamental services or business activities are primarily performed.
- **Determination No. 95-088ER, 17 WTD 25 (1998)** - Goods sold by an out-of-state vendor to its Washington customers were delivered in Washington and, therefore, are considered Washington sales when the vendor bore the expense of the shipment, even though the goods were sold f.o.b. vendor's out-of-state plant.
- **Determination No. 98-054, 17 WTD 354 (1998)** - In order for a "sale" to take place there must be delivery of tangible personal property.
- **Determination No. 97-202ER, 18 WTD 377 (1999)** - Goods are accepted in Washington where the contract between the buyer and the out-of-state seller expressly states that products shall be subject to final inspection and acceptance by the buyer at the buyer's Washington facility and inspection or acceptance in Washington actually occurs, notwithstanding any payment or prior inspection out-of-state.
- **Determination No. 98-133, 18 WTD 153 (1999)** - The transfer of goods for valuable services constitutes a sale of the goods measured by the value of the services.
- **Determination No. 99-216E, 18 WTD 264 (1999)** - Sales take place in Washington where an out-of-state manufacturer sells products to a Washington buyer under a contract which provides that the goods will be sent f.o.b. the taxpayer's out-of-state manufacturing plant and that the products are subject to final inspection and acceptance by the buyer at the destination in Washington.

Attorney General's Opinions (AGOs): **None found.**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

10. Review Recommendation:

_____ Amend

_____ Repeal



- ☒ Leave as is
- ☐ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)
- ☐ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)



Explanation of recommendation: (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

There is no need to revise this rule at this time but should the department consider revising the rule, the following recommendations are made:

- **Remove the portion of Rule 103 that addresses renting or leasing of tangible personal property. This information is addressed in greater detail in WAC 458-20-193(5)(d).**
- **Remove the portion of Rule 103 that addresses gift certificates, explaining when the sale occurs and the measure of the tax in regards to the use of gift certificates. The department should consider incorporating this information possibly into an expanded WAC 458-20-108 (Returned goods, allowances, cash discounts).**

The issues addressed in this rule are generally raised with respect to sales in interstate commerce. The department should consider incorporating the pertinent information now found in this rule into a revised WAC 458-20-193.

11. Manager action: Date: _____

_____ Reviewed recommendation _____ Accepted recommendation

_____ Returned for further action

Comments: